



October 11, 2000

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2000-3916

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 139984.

The Texas Department of Criminal Justice (the "department") received a request for information relating to use of force and other investigations involving a particular correctional officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.131 of the Government Code relates to inmates of the department.¹ Section 552.131 provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

¹As of the date of this letter ruling, four different sections of the Act were denominated as section 552.131. Sections 552.131 and 552.029, relating to inmates of the department, were added to chapter 552 of the Government Code by the Act of May 26, 1999, 76th Leg., R.S., ch.783, §§ 1, 2, 1999 Tex. Gen. Laws 3407-08.

Gov't Code § 552.131(a). Section 552.029 of the Government Code provides in relevant part:

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure[:]

. . .

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8). Thus, the legislature explicitly made section 552.131 subject to section 552.029. Pursuant to section 552.029, "basic information" regarding an incident involving the use of force is subject to required disclosure. Gov't Code § 552.029(8). In this instance, the submitted records relate to investigations of two different incidents involving the use of force. Consequently, basic information about each of those incidents is subject to required disclosure under section 552.029(8). The basic information that is subject to disclosure under section 552.029(8) includes the time and place of each incident, the names of inmates and of department employees who were involved, a brief narrative of each incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. Information about an inmate that is not subject to required disclosure under section 552.029 is excepted from disclosure under section 552.131.

You also raise section 552.107(2) of the Government Code in conjunction with the decision of the federal court in *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and rev'd in part*, 679 F.2d 1115, *amended in part and vacated in part, reh'g denied*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). Section 552.107(2) provides that information is excepted from required public disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). The Stipulated Modification of the Amended Decree in the *Ruiz* case restricted the dissemination of "sensitive information" regarding inmates. See Open Records Decision No. 560 (1990). However, the final judgment in *Ruiz*, entered on December 11, 1992, gave the Texas Board of Criminal Justice (the "board") authority to define the term "sensitive information." On January 21, 2000, the board met and, acting under the authority of the final judgment in *Ruiz*, determined that "the term 'Sensitive Information' shall include all information regarding TDCJ-ID offenders not required to be disclosed pursuant to Section 552.029, Government Code." Thus, the board has determined that information that is subject to disclosure under section 552.029(8) of the Government Code is not "sensitive information" that the department may withhold from the public under section 552.107(2) in conjunction with the *Ruiz* decision.

You also claim that information relating to one of the use of force incidents is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, section 552.101 encompasses information that is made confidential by another statute. In this instance, you raise section 552.101 in conjunction with section 501.008 of the Government Code, which provides in relevant part:

(c) A report, investigation, or supporting document prepared by the department in response to an inmate grievance is considered to have been prepared in anticipation of litigation and is confidential, privileged, and not subject to discovery by the inmate in a claim arising out of the same operative facts as are alleged in the grievance.

Gov't Code § 501.008(c). You have submitted an investigation report involving an inmate grievance raised in 1992. You claim that the report, which was prepared in 1993, is confidential under section 501.008(c). The Seventy-fourth Legislature amended section 501.008 and added subsections (b) through (f) in 1995. *See* Act of May 19, 1995, 74th Leg., R.S., ch. 378, § 6, 1995 Tex. Gen. Laws 2921, 2925-26. The legislation was made effective on June 8, 1995. *Id.* at § 11, 1995 Tex. Gen. Laws at 2927. Section 10 of that legislation provides in relevant part:

Section 501.008, Government Code, as amended by this Act, applies only to an inmate grievance filed on or after the effective date of this Act. An inmate grievance filed before the effective date is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Id. at § 10(c). Thus, section 501.008(c) of the Government Code, as added by the Seventy-fourth Legislature in 1995, does not apply to a report, investigation, or other document that involves an inmate grievance raised in 1992. Therefore, we conclude that the report in question is not confidential under section 552.101 of the Government Code in conjunction with section 501.008.²

In summary, basic information regarding both of the use of force incidents is subject to required disclosure under section 552.029(8) of the Government Code. The basic information that is subject to disclosure under section 552.029 may not be withheld under sections 552.107(2) or 552.101. The rest of the requested information is excepted from

²We express no other opinion with regard to your arguments under section 501.008.

disclosure under section 552.131. As we are able to make a determination under these exceptions, we need not consider your claim under section 552.108.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

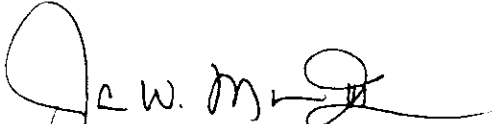
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

³We note, however, that the basic information that is subject to public disclosure under section 552.029 corresponds to the basic "front-page" offense and arrest report information that must be released to the public under section 552.108. See Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).

complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W. Morris, III', with a large, stylized initial 'J' and a long, sweeping horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 139984

Encl. Submitted documents

cc: Mr. Stephen Davis
1677 Hwy 190 #50
Huntsville, Texas 77340
(w/o enclosures)